

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JOHANZ X. SANTOS, ppa, DENISE COLON,	)	C.A. No.: 03- 12210 MLW
DENISE COLON, Individually, JESUS SANTOS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
BOB'S DISCOUNT FURNITURE; REGENT	)	
HOME DELIVERY; AGNILIZ ACOSTAS;	)	
RAUL SANTOS,	)	
	)	
Defendants.	)	
_____	)	

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S**  
**MOTION TO RECONSIDER**

The defendant's basis for filing this motion so late in the proceedings is based on what it alleges as recently discovered evidence. However, the defendant has been on notice of the claim for more than one year. Pursuant to MGL c. 176D the defendant's insurance company had an obligation to conduct a prompt and thorough investigation of this claim. Any such properly conducted investigation should have revealed the same facts the defendant now alleges it just recently learned i.e. alleged lack of supervision by the parents. The defendant either did not conduct the investigation it should have conducted or it did have this information and is now alleging recent discovery. The only way to be certain is to require the defendant and its insurer to provide the Court with all its investigation documents including witness statements taken as part of its investigation. Since the defendant through its insurer had an obligation to conduct a prompt investigation it either did not fulfill that obligation or the defendant is not being straightforward with the Court in alleging it did not have a good faith basis to bring a counterclaim prior to October 29, 2004. If the investigation files disclose that the defendant was aware of this alleged lack of supervision by the minor plaintiff's parents then the defendant's motion should be dismissed and the defendant sanctioned for misrepresenting facts to the Court.

Respectfully Submitted  
By Their Attorneys,

/s/ David P. Angueira  
Edward M. Swartz  
BBO#489540  
David P. Angueira  
BBO#019610  
SWARTZ & SWARTZ  
10 Marshall Street  
Boston, MA 02108  
(617) 742-1900

**CERTIFICATE OF SERVICE**

I, David P. Angueira, do hereby certify that I have served a copy of the within of Plaintiff's Opposition to Defendant's Motion to File Counterclaim upon the Defendants:

By Electronic Filing:

Richard F. Faille, Esq.

Faille, Birrell & Daniels

22<sup>nd</sup> Floor

1414 Main Street

Springfield, MA 01144

By First Class Mail:

James F. Roux, Esq.,

John P. Connor

Smith & Brink, PC

191 Chestnut Street - Suite 3D

Springfield MA 01103

/s/ David P. Angueira

David P. Angueira, BBO# 019610

Dated: December 14, 2004